GINTER'S EXECUTORS v. SHELTON AND OTHERS.*

Supreme Court of Appeals: At Richmond.

December 9, 1903.

Absent, *Buchanan*, J.†

1. APPEAL AND ERROR—*Amount in controversy.* Where the claim of several persons to take as legatees under a particular clause of a will is resisted by the executor, and there are separate decrees in their favor, the amount in controversy in this court, as to the executor, is the aggregate amount of the decrees against him, although no one of them would be sufficient to give the court jurisdiction.

2. WILLS—*Construction*—"*Servants.*" In the absence of anything in the will or in the circumstances surrounding the testator to show a contrary intention, a gift by will "to all servants in my employ at the time of my death fifty dollars each" will include laborers on the farm of the testator. The word "servants," especially in connection with the word "all" preceding it, will be deemed to have been used in a comprehensive sense, and will not be restricted to domestics.

Appeal from decrees of the Circuit Court of Henrico county, pronounced in a chancery suit wherein the appellee, Shelton, suing on behalf of himself and others, was the complainant, and the appellants and others were the defendants. *Affirmed.*

The opinion states the case.

Charles S. Stringfellow, for the appellants.

Meredith & Cocke and *Coalter & Wise,* for the appellees.

KEITH, P., delivered the opinion of the court.

J. B. Shelton, suing on behalf of himself and all others who might come in and contribute their proportion of the costs, filed his bill in the Circuit Court of Henrico county, asking the construction of codicil No. 5 of the will of Lewis Ginter, deceased, by which he bequeathed to certain persons therein named specific sums of money, and then uses the following language: "To all servants in my employ at the time of my death fifty dollars each." Quite a large number claimed the benefit of this provision, and by the decree of the Circuit Court the executors were required to pay out in the

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aggregate the sum of something more than $6,000 to these legatees, whose separate demands were $50 each. The executors of Mr. Ginter appealed from this decree, and the case is now before us for review.

The first question we are to dispose of is the motion made by appellees to dismiss this appeal for want of jurisdiction; their contention being that, as each one of appellees receives only the sum of $50 by the decree, it does not come within the jurisdictional limit imposed by law upon this court.

This question first arose in the case of *Umbarger* v. *Watts*, 25 Gratt. at page 167. That case is just the converse of the one before us. A number of judgment creditors sought to subject their debtor's lands to the satisfaction of their judgments, none of which amounted to $500. Upon a decree dismissing the bill, it was held that the Court of Appeals has no jurisdiction to allow or hear an appeal from a decree on the ground that the united judgments amount to more than $500.

The precise question now under consideration arose in *Winchester & Strasburg Railroad Co.* v. *Colfelt et al.*, 27 Gratt. at page 780. The plaintiff Colfelt's judgments aggregated only $169.91; the judgment of Jenkins amounted to $1,117.60, which he was allowed to come in and prove before the commissioner; and the final decree against the railroad company was for the aggregate of all the judgments, amounting to $1,286.91, of which the company complained. Says the court: "If aggrieved, to what extent is it [the railroad company] aggrieved by the decree? To the amount of Colfelt's judgments, or the aggregate of all the judgments? Clearly the latter. And the company being the party seeking the reversal of that decree, if it is erroneous, it is aggrieved to the extent of all the judgments; and this court is rightfully in possession of the case upon the petition of this appellant, and has jurisdiction to review the decision of the lower court, and to reverse the decree, if found to be erroneous."

The question has arisen in numerous cases, and the decisions have been unanimous. In *Williams' Adm'r* v. *Clark's Representatives*, 93 Va. 691, 25 S. E. 1013, it is held that, in a suit to settle the estate of a decedent, the aggregate amount of the debts decreed aginst his representative is the amount which the representative has in controversy, and he has the right of appeal as to all the creditors, although the claims of some of them are less than $500. And in *Hicks* v. *Roanoke Brick Co.*, 94 Va. 742, 27 S. E. 596, the court

refers to all of the Virginia decisions, and holds that the amount decreed against the appellant is the amount in controversy, as to him, and not the several amounts decreed in favor of the appellees.

If the aggregate of the sums decreed against the appellant exceeds $500, this court has jurisdiction, although the amount decreed to no one of the appellees amounts to $500.

The motion to dismiss must be overruled.

Coming to the case upon the merits, we find that the only question raised is as to the meaning to be given to the word "servants," as used in the fifth codicil of the will. It is as follows: "Referring to the Fourteenth Clause of my will dated June 15th, 1897, I direct my executors to pay to the following persons the sum set opposite their names." Then follows the names of 11 legatees, who are given sums ranging from $2,500 to $200; and it appears from the evidence that some of them were in his employment at the time as domestic servants, while others were engaged at a factory in the city of Richmond in which Mr. Ginter was interested. The appellees were employed upon his farms, of which he owned several near the city, and do not come within the class recognized by law as menial or domestic servants.

Mr. Minor says that a master is one who exercises personal authority over another, and that other is his servant. He then goes on to say that the several classes of servants are, first, slaves; secondly, menial servants; third, apprentices; fourth, laborers; fifth, stewards, bailiffs, factors, agents, etc. 1 Minor's Inst. (3d Ed.) c. 14, p. 179.

"A servant," says Wood's Master & Servant, sec. 1, "strictly speaking, is a person who, by contract or operation of law, is for a limited period subject to the control of another in a particular trade, business, or occupation."

The primary definition given by the Century Dictionary is: "One who serves or attends, whether voluntarily or involuntarily; a person employed by another, and subject to his orders; one who exerts himself or herself or labors for the benefit of a master or employer." And the Standard Dictionary defines a servant as: "(1) A person employed to labor for the pleasure or interest of another; especially, in law, one employed to render service or assistance in some trade or vocation, but without authority to act as agent in place of his employer; an employee. (2) Specifically, a person hired to assist in domestic matters, living within the employer's house.

and making part of his family; hired help." Webster is to the same effect.

The testator has seen fit to use the most comprehensive term he could have employed; and, as though it had been his purpose to exclude any contrary conclusion, he accentuates this general term by placing before it the adjective "all," which can serve no other purpose than to intensify, for it cannot enlarge, the definition to be given to the word "servants," which it qualifies. "All" must be given that effect, or it has none. There is nothing in the will, nor in the context of the residue of the clause, which limits the meaning of the word "servants." Indeed, if resort be had to one of the usual modes of interpretation, and we should apply the doctrine of *noscitur a sociis,* the effect would be to enlarge, if possible, rather than limit, the meaning of the word "servants," for it clearly appears from the evidence that among those specifically named are at least three persons who were not at the date of the will nor at the death of the testator his servants in any sense. They had been in his employment, they had been his servants, and that fact constituted the motive of the gift, but they were mere strangers to him when the will was written and at the time of his death.

The word "servant" embraces many classes. It is a generic, and not a specific, designation. It would have been easy to confine the bequest to a class of servants, such as "menial," "household," or "domestic," if such had been the intention of the testator, but no such restraining purpose is shown. Our office is to find out the intention of the testator from the words he used, giving to them their usual or common meaning. It is not for us to interpolate words, or to indulge in strained construction, in order to effectuate a presumed intention. We are here to interpret a will, and not to make one.

The testator, during his life and by his will, disposed of a princely estate. In framing that portion of his will which disposes of the bulk of his property, he doubtless had the benefit of counsel learned in the law, but when he came to write this codicil he took counsel only of his kindly heart. He had endowed many charities, had enriched his kindred, and assisted his friends, and finally he remembered his servants. To the more favored or deserving he gave legacies by name, and then to each of a class the sum of $50, though the individuals composing it may have entered his service only at the eleventh hour.

It is not for us to stint the stream of testator's bounty within a narrower channel than his generosity saw fit to trace, and it may well be that this remembrance of the humble and the needy is what he now recalls with greatest satisfaction.

The decree of the Circuit Court is affirmed. *Affirmed.*

EDITORIAL NOTE.—This case, so far as it involved the question of the judicial definition of the word "servants," is one of first impression in Virginia. From the fact that the opinion cites no cases, it might be inferred that there is a general absence of case-law upon the subject, but this would be erroneous. The learned counsel for appellants, in his petition for appeal, calls attention to the fact that the quotation from Wood on Master and Servant (made by the court, *supra*), is qualified in section 3 as follows: "Instances may arise where the distinction between menial servants and general laborers, as farm hands, mechanics, etc., will be observed by the courts, but I apprehend that this distinction will only be recognized in cases where, in certain instances, as in a will, it is evident that the testator, in making the instrument, *had in view and made the instrument in reference to the social, rather than the legal meaning of the term.* Thus, if a person who has in his employ a large number of mechanics, besides his household servants, should make a will and bequeath to each of his servants, without naming them, a specific legacy, there can be no question but that the benefits of the will would be restricted to his domestic servants, unless there was something in the will to show a different intention." And in a note to section 2, the same author says: "In England it has been held in numerous cases that when legacies are left to the testator's servants, this can be held to apply only to those who served in his household and resided therein, and would not extend to laborers upon a farm, clerks in a store, or to any except those who properly came under the head of menials or domestic servants." The Century Dictionary, quoted in the opinion, is also invoked by the counsel for appellants, narrowing the definition of the word "servants" thus: "In modern use it denotes specifically a domestic or menial laborer. . . . . A person in domestic service; a household or personal attendant; a domestic or menial." In a Georgia case, incorrectly cited in the brief for appellants, Chief Justice Lochran used the following language: "It is not the theory, nor is it consistent with the spirit of our institutions, to recognize factors, stewards or bailiffs in the light of servants, as at common law." *Ex parte Mason*, 5 Binney (Pa.) 175, was also cited for appellants, though the latter involved the construction of an act of assembly.

The argument, by way of illustration, was extended to the construction of 3886 of the Code of Virginia, enacting that no person in the relation of husband or wife, etc., "or servant to the offender," aiding in the escape of a principal felon shall be deemed an accessory after the fact, and it was urged that this exemption would never be extended to servants other than such as are strictly domestic, between whom and the master exist close personal relations. *Burgess* v. *Carpenter*, 2 S. C. 9, and *Epps* v. *Epps*, 17

Ill. App. 201, were further cited as supporting the restricted definition. But *Metcalf* v. *Sweeney*, 17 R. I. 213, approaches the facts of the principal case more nearly than any of the others. In that case the testator directed that his executor should "pay over to such servants as shall be in my employ at my death," a sum of money. These proved to be six in number, but a claimant who served not continuously, but occasionally and at irregular intervals, but who nevertheless was entrusted with the charge of testator's city and country houses at different times, *who was at work in his house in the city at the time of his death and who was present when he died*, was adjudged to be not entitled to share. The court said that while many considerations weighed in her favor, the service rendered by her lacked the continuity, fixity and permanence of relation needed to give validity to her claim. Citing *Townshend* v. *Windham*, 2 Vernon, 546.

Among the cases cited by the appellees in the principal case were *Frazer* v. *Weld*, 177 Mass. 513, in which a legacy was construed against such a claimant upon the ground that the word "servants" was limited by other words in the will, the court, however, stating the general rule to be: "That the words of a testator favorable to the claims of legatees are to be construed literally and beneficially and that the bounty ought to be extended *as far as the express words of the bequest necessarily carry it.*" In *Parker* v. *Marchland*, 1 Y. & C. 290, the court went so far as to hold a claimant who had been, but, at the time of testator's death, was not in the service of testator, to be embraced within the terms of a legacy "to the other servants," saying: "The best rule of construction is that which takes the words to comprehend a subject which falls within their usual sense, *unless there is something like a declaration plain to the contrary.*" *Re Shunland*, 1 Chan. Div. 517, is to the same effect, though it seems to go still farther. In *Suisse* v. *Lord Souther*, 12 L. J. (N. S.) 315, the court made another ruling upon bequests to servants distinctly favorable to them. As to who are *menial* servants, *Nowlan* v. *Ablett*, 2 C. M. & R. 54, was cited, holding a head gardner to be such; *Johnson* v. *Blankensoff*, 5 Jurist, 780, a stableman and harvester, and *Nichols* v. *Greaves*, 112 E. C. L., 27, a huntsman. In *Bulling* v. *Ellice*, 9 Jurist, 936, a farm bailiff and agent was held a servant thus entitled, and in *Armstrong* v. *Clavering*, 27 Beav. 226, a land agent and head steward.

The foregoing will suffice to show that the subject has been often before the courts and that the question is far from being easy of solution. It is obviously capable of being disposed of only by the process so familiar in will controversies—of determining each case or class of cases as it arises. The general expression "all servants in my employ" manifestly turned whatever doubt may have existed in the mind of the court in the principal case. This by no means commits it to the same construction where the language employed is, in a material respect, different. In other words, when the language of another will may be, "to each of my household servants," the question is still an open one and the principal case is not a precedent. The court says as much. The executors of Mr. Ginter may congratulate themselves upon the fact that his immense cigarette manufacturing business was

a corporate and not a personal one—otherwise its hundreds of "servants" would have enjoyed the bounty of the fifth codicil of his will along with the farm-hands, quarry-men, blacksmiths, engineers, etc., who worked on his country-place.

HEADRICK v. MCDOWELL AND OTHERS.*

Supreme Court of Appeals: At Richmond.

December 3, 1903.

Absent, *Buchanan*, J.†

DESCENTS AND DISTRIBUTIONS—*Advancements—Release of expectancy.* Upon the death of a parent intestate, the descent is cast by operation of law upon his heirs, and his personalty passes in accordance with the statute of distributions. Where advancements have been made in the lifetime of the parent they must be brought into hotchpot by him who receives it, and thus perfect equality is attained. This rule is unaffected by the fact that some of the heirs, at the time of receiving their advancements, enter into covenants with the parent whereby they relinquish all interest in or claim to any portion of the estate then owned or which may be thereafter acquired by the parent, and as to which he may die intestate.

Appeal from a decree of the Circuit Court of Pittsylvania county, pronounced in a suit in chancery wherein the appellant was the complainant, and the appellees were the defendants. *Affirmed*

The opinion states the case.

James L. Tredway and *Samuel A. Anderson*, for the appellant.

P H. & H. Dillard, for the appellees.

KEITH, P., delivered the opinion of the court.

Jacob Headrick, wishing to make an advancement to his son John C. Headrick of the whole of that portion of his estate, both real and personal, which he supposed the son would otherwise receive upon the father's death, on the 31st of August, 1883, paid to his son John C. Headrick the sum of $850, and in consideration thereof John C. Headrick forever relinquished all interest in and claim to any portion of the estate which Jacob Headrick then owned or might thereafter acquire, and as to which he might die intestate. This advancement on the part of the father and relinquishment on the

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